The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Emerson Electric Company

File: B-227936

Date: November 5, 1987

DIGEST

1. Where solicitation evaluation criteria provided for consideration of proven nature and deployability of proposed equipment among several technical factors, the fact that protester's proposed equipment is proven and would be easier to deploy than awardee's does not evidence unreasonable evaluation where awardee's proposal was found superior in other technical areas.

2. Agency was not required to conduct discussions that would result in the disclosure of another offeror's innovative approach to increasing throughput capacity of automatic test equipment--by including two rather than one test station in each system--since this would result in prohibited technical transfusion.

3. Protest of agency failure to give notice during negotiations that request for waiver from standardization requirement was not approved is untimely where offerors were advised in writing, prior to initial closing date, that waiver request would not be discussed and protest of this alleged impropriety was not raised prior to the initial closing date.

DECISION

Emerson Electric Company protests the award of a contract to Allied Corporation, Bendix Test Systems Division, under request for proposals (RFP) No. F41608-86-R-1729, issued by the Department of the Air Force for the A-7 Corsair Avionics Systems Tester (CAST). Emerson alleges that both the discussions and the evaluation of proposals were conducted improperly.

We deny the protest.

BACKGROUND

The solicitation requested proposals to develop and produce automatic test equipment (ATE) for support of avionics systems--bombing navigation systems--on the A-7 Corsair light bomber aircraft. The solicitation stated that the agency's objective was to replace the current testing system with one based on the Air Force's Modular Automatic Test Equipment (MATE) guidelines, that would provide greater reliability, increased availability, decreased maintenance expense, and down-sized, highly portable equipment with a minimum number of test program sets (i.e., software programs and test accessories). The MATE program is aimed at developing standardized ATE to simplify testing logistics and avionics maintenance, and includes standards for such test system elements as software, computer languages, and interfaces.

Although the RFP required proposed systems to be based on MATE interfaces and standards to the maximum extent possible, it also provided for the use of other available technology not fully conforming to MATE standards if it would be life-cycle cost effective, would improve system performance, or would reduce test system size (improve portability). Offerors were required to identify in their proposals any MATE standards from which their system would deviate, and also were required to submit a MATE waiver request and supporting documentation substantiating the need for each deviation.

The solicitation listed the primary criteria for the evaluation of proposals, in descending order of importance, as (1) technical approach; (2) logistics supportability; (3) producibility/manufacturing capability; and (4) total life-cycle cost. Under technical approach, emphasis was to be placed on such secondary factors as throughput (work volume/speed) capacity; MATE compliance; high reliability and availability/ease of maintenance; reducing overall system size and weight (deployability) while performing multi-function testing; and software design methodology.

The Air Force received eight proposals and conducted written and oral discussions with all offerors. After requesting and evaluating best and final offers, the Air Force concluded that Allied had proposed the most technically desirable system; it found Allied's technical approach to be either exceptional or acceptable with regard to overall system characteristics, hardware design, software design and test program sets. By contrast, the agency considered Emerson's proposed system to be only marginal in these areas and to rank only seventh in overall technical desirability.

Among the determining considerations was the Air Force's conclusion that a two-test-station approach (allowing the test and repair of two avionics units at the same time) offered by Allied was particularly desirable because it would provide an extremely high throughput capacity, resulting in an average backlog of units awaiting repair of only .98 days (compared to a backlog of 1.49 days under Emerson's single station approach). The Air Force also rated Allied's system higher because it was fully MATE-compliant, primarily using commercial, off-the-shelf circuit cards; the Air Force concluded that the system realistically was supportable (i.e., easy to maintain and update) for its projected life span. By contrast, evaluators questioned the long-term supportability of Emerson's proposed system, which was derived from a system the firm developed for testing the F-15 fighter aircraft, and for which the Air Force had waived compliance with MATE standards. Evaluators found that because Emerson's system was based primarily on custom, non-MATE software with multiple programming languages, it was unduly complex and would be difficult to support and maintain. The Air Force also viewed Emerson's approach to connecting items to its system for testing as potentially increasing signal noise and making fault detection more difficult.

The estimated total life-cycle cost of Allied's proposed system ($83,800,590) was only the third lowest among the eight systems, exceeding the life cycle cost of Emerson's system ($81,100,000) by 3.3 percent. Since, however cost was the least important criterion under the solicitation, the Air Force concluded that the technical superiority of Allied's proposal offset its higher cost, and made the award to Allied on this basis.

TECHNICAL EVALUATION

Emerson first argues that its proposal improperly was downgraded in the technical evaluation for complying with the solicitation instructions. Pointing out that the RFP provided that "one of the principal objectives of the CAST program is the development of downsized/highly portable automatic test equipment," the protester claims it purposely offered a system with only a single test station, and configured the system to achieve this objective.

Agency evaluators recognized the portability of Emerson's system (compared to Allied's system), but concluded that this strength did not offset its comparative weakness in throughput capacity--a specified evaluation criterion--and other operating characteristics. While the RFP instructed offerors that a portable system was a principal objective, this objective had to be considered in light of the other

stated objectives, requirements, and evaluation criteria. As discussed above, for example, the Air Force found Emerson's proposed system had not satisfied the MATE compliance objective, a factor so significant that it was included as a technical evaluation factor.

The determination of the relative merits of proposals, particularly regarding technical considerations, is primarily within the judgment of the contracting agency, and we will review these judgments only to assure that they are reasonable and consistent with procurement laws and regulations. Delta Computec, Inc., B-225442, Feb. 9, 1987, 87-1 CPD ¶ 139. We do not think the Air Force's conclusion regarding the portability of Emerson's system was unreasonable or otherwise improper.

Emerson argues in a similar vien that its proposal also was improperly downgraded for complying with a statement in the RFP that, "during the evaluation process, emphasis will be placed on contractor use of tested and proven hardware to minimize technical and schedule risk and program cost." Emerson explains that in accord with this emphasis it proposed as the core units of its system the equipment it developed for the F-15 aircraft, even though it would necessitate a waiver of certain MATE standards. Emerson argued in justifying the waiver that its proposed system was superior to an equivalent MATE complaint system as to life-cycle cost, performance, and portability. As indicated above, however, the evaluators downgraded the proposal for non-MATE compliance based on concerns as to complexity and long-term supportability of the system, and an additional concern that award to Emerson could lock the agency into a sole-source relationship with the firm. We see no inconsistency in the evaluation.

While the RFP emphasized proven equipment, so too did it emphasize MATE compliance; it was the responsibility of all offerors to achieve both to the extent possible. The Air Force ultimately concluded that Allied's proposal achieved a more desirable mix of these two considerations than did Emerson's. In view of the general solicitation requirement for compliance with the agency's policy on standardization of ATE, as set forth in the MATE standards, we find that the agency reasonably viewed Emerson's failure to conform to all of the MATE standards as rendering its proposal weak relative to Allied's; the agency made a reasonable judgment based on a balancing of two competing requirements.

DISCUSSIONS

Emerson maintains that the Air Force improperly failed to advise the firm during discussions that throughput capacity

and the waiver of MATE standards were weaknesses in its proposal. We do not agree. While agencies generally must advise offerors of deficiencies in their proposals during discussions so that offerors will have an opportunity to modify their proposals to satisfy the governments requirements, see Federal Acquisition Regulation, 48 C.F.R. § 15.610 (1986), an agency should not conduct discussions likely to result in "technical transfusion," i.e., the disclosure to a competitor of one offeror's innovative approach or solutions to problems. See Regional Environmental Consultants, B-223555, October 27, 1986, 66 Comp. Gen. ___, 86-2 CPD ¶ 476. Applying this standard here, the Air Force clearly could not disclose Allied's innovative approach to increasing throughput capacity (proposing two test stations in each CAST system). It should be emphasized, moreover, that while Emerson's approach was deemed weak relative to Allied's in this case, thus was not a deficiency that would render Emerson's proposal unacceptable; that is, this is not a situation where the agency failed to advise Emerson that its proposal did not satisfy some objective minimum requirement.

As for the Air Force's failure to advise Emerson that its proposed MATE waiver constituted a weakness, in a list of questions and answers from a preproposal conference, the Air Force specifically advised offerors that it would not notify offerors if proposed MATE waivers were not approved. As these questions and answers were furnished to all offerors in a writing signed by the contracting officer, all offerors, including Emerson, should have been aware of the agency's position that a MATE waiver was not a suitable topic for negotiations. Accordingly, Emerson's challenge to the absence of an opportunity to respond to the denial of the waiver request is untimely, because Emerson did not raise this alleged solicitation impropriety prior to the closing date for receipt of initial proposals. This aspect of the protest thus will not be considered. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987).

Although our discussion does not encompass all of the weaknesses that the Air Force found in Emerson's proposal. The Air Force considered the weaknesses discussed above sufficient to justify the award to Allied. We have examined the record, and find no other basis for questioning the award decision; the agency acted reasonably in balancing

competing evaluation factors and determining that acceptance of Allied's proposal was most advantageous to the government.

The protest is denied.

for Seymour Efros
James F. Hinchman
General Counsel